

DOCKET FILE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Carriage of the Transmissions)
of Digital Television Broadcast Stations)

Amendments to Part 76)
of the Commission's Rules)

CS Docket No. 98-120

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

COMMENTS OF ZDTV

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COMMENTS OF ZDTV

Forty-five percent (45%) of all U.S. households currently have at least one personal computer¹ and one hundred and ten million (110,000,000) adult Americans now use personal computers.² In response to this growing need, ZDTV recently launched the first 24-hour programming channel and companion website dedicated to computers, computing, technology, and the Internet. ZDTV submits these comments in response to the FCC's Notice of Proposed Rulemaking in the above-captioned proceeding³ as a source of diverse, compelling, clearly differentiated programming that could be displaced by a government-mandated requirement that cable operators carry both a broadcaster's analog and its digital signal during the transition period to fully digital broadcasting. Such a rule could chill ZDTV's momentum as it seeks carriage on cable operators' analog or digital channels, and leave its promise of increased diversity for the cable consumer stillborn.

¹ See *1998 Consumer Technology Index*, ZD Market Intelligence.

² See *Internet Trak*, 1st Quarter, 1998.

³ *Carriage of the Transmissions of Digital Television Broadcast Stations, Notice of Proposed Rulemaking*, FCC 98-153 (rel. July 10, 1998).

I. ZDTV PROVIDES A UNIQUE INTERACTIVE PROGRAMMING EXPERIENCE NOT REPLICATED ON BROADCAST TELEVISION

ZDTV, which first aired on May 11, 1998, produces original television programming that is complemented by simultaneous content on its companion website, ZDTV.com. ZDTV's news, information, entertainment and how-to programming is geared toward a broad spectrum of the public. Up-to-the-minute news programs are featured on computer and Internet-related topics. Other programs cover the latest trends on the web, computer help, personal finance, and computer-related products. ZDTV is an affiliate of Ziff-Davis, a leading integrated media and marketing company focused on computing and Internet-related technology. Ziff-Davis is one of the leading producers of print publications related to computers such as *PC Magazine*, *Computer Shopper*, and *PC Week*.

ZDTV's audience is not a niche audience. It is a mainstream audience. Computing is no longer a special interest, but is in fact a daily activity for many millions of Americans in both their personal and business lives. One hundred and ten million (110,000,000) American adults use a personal computer.⁴ Forty-five percent (45%) of all U.S. households currently have at least one (1) personal computer.⁵ According to a recent study by ZDTV's affiliate, Ziff-Davis, 82 million (82,000,000) adult Americans have accessed the Internet.⁶ That is the number for *adult* Americans – not counting children. In 1997 alone, approximately 10 million (10,000,000) Americans purchased products on-line via credit card.⁷

⁴ See footnote 2, *supra*.

⁵ See footnote 1, *supra*.

⁶ See *Internet Trak*, 2nd Quarter 1998.

⁷ See 1998 ZD Technology User Profile, ZD Market Intelligence. See also, CableFax Daily, September 11, 1998.

ZDTV is also an interactive network. Viewers can interact with ZDTV's hosts and other viewers in live chats, forums, polls and other daily events and can even appear on ZDTV from their home or office if they have a netcam, a small camera which feeds video directly into their computers. Viewers no longer have to be in the studio to appear as a guest. Viewers can also submit video mail ("vmail") with comments and questions about different topics and segments to air on the channel. To encourage that kind of participation, ZDTV, along with 3-COM Corporation, is distributing up to 10,000 BigPicture NetCams. ZDTV thus unites the world of television and the Internet to create a new community where viewers participate in a convergent entertainment and information experience.

ZDTV provides two daily half-hour live news shows and hourly live updates. "*Silicon Spin*" provides the context behind breaking computer, Internet and technology news and issues of the day. "*Internet Tonight*" provides daily tips for accessing the digital culture. "*The Screen Savers*" provide information for intermediate to advanced computer enthusiasts. "*Call for Help*" provides assistance and knowledge about computers and the Internet to people at home and work, to demystify the process of using, buying and enjoying computers. "*Fresh Gear*" is addressed to those interested in new and developing computer and convergence products. "*Game Spot TV*" provides dedicated computer gamers with product reviews and insights into new computer and console games.

II. ZDTV WILL BE IMPACTED DRAMATICALLY BY ANY RULES MANDATING CABLE CARRIAGE OF BOTH A BROADCASTER'S DIGITAL SIGNAL AND ITS ANALOG SIGNAL

Ziff-Davis, ZDTV's affiliate, has no affiliation with any cable multiple system operator and ZDTV is available to all video distribution technologies. It is distributed by DirectTV and Echostar as well as by numerous other cable operators. ZDTV has achieved steady growth since

its launch this May, most recently with distribution agreements with cable MSOs Cox and Comcast.⁸

ZDTV, however, finds that in many markets where cable operators wish to add ZDTV to their line-ups their channel capacity is already totally filled by analog broadcast stations with must-carry rights under existing FCC rules, in addition to many of the longer-established cable program networks. In these markets, ZDTV also faces competition with scores of other new programming networks fighting for scarce channel capacity, even on the new digital tiers that some cable operators are adding to their analog channel tiers.

The next few years will be critical to ZDTV's success. If the FCC allows each broadcaster to control two channels, one analog and one digital, in each television market during this period, ZDTV's chances for success will be inhibited. Not only would it face the multitude of national, regional and local non-broadcast programming services vying for carriage, but it would also face the required addition to a cable operator's line-up of up to 22 additional broadcast channels in a market such as Los Angeles.

To impose on top of the existing must-carry rules an additional digital must-carry regime would further exacerbate the already second class First Amendment status of cable programmers such as ZDTV to broadcasters. Unlike the situation the FCC faced in adopting the 1992 must-carry rules under the 1992 Cable Act, here Congress has made no findings that the economic health of broadcasting demands vastly expanded must-carry protections during the transition period to full digital TV.

NCTA and numerous others will demonstrate that must-carry rules would be beyond the scope of the FCC's Congressional authorization and, in fact, would fail to pass constitutional

⁸ See "ZDTV Lands Cox Deal, Comcast Test," Multichannel News, July 27, 1998.

muster. ZDTV will not repeat these arguments here. ZDTV's objective in this filing is to make clear the real world adverse consequences to unique program networks from an FCC decision that took the wrong fork in the road to the digital future.

III. MARKETPLACE SOLUTIONS TO DIGITAL BROADCAST SIGNAL CARRIAGE ARE PREFERABLE TO FCC MANDATES

Mandatory carriage of both digital and analog TV signals would benefit only the small number of consumers who are "early adopters" willing to spend huge sums for expensive high-end digital receivers before the full broadcast digital transition occurs. The FCC should let the marketplace work out the technical arrangements during the transition to allow those who wish to receive broadcaster's digital TV signals to do so. Otherwise the ability of clearly innovative programmers such as ZDTV to reach consumers will be unnecessarily foreclosed in favor of as yet undefined broadcast digital services.

The technical partners of the digital medium are still in flux. The business model for digital broadcasting is unclear. This is a sensitive time when both the cable television and broadcast television industries are attempting to transition from the analog to the digital world. Premature digital must-carry regulations could have a dramatic stifling effect on overall television industry growth, innovation, and business development, as well as immediate adverse impact on cable programmers like ZDTV.

The fluidity of the as yet to evolve broadcast/cable business models for HDTV strongly cautions against government mandates during the transition to digital broadcasting. As FCC Chairman Kennard recently said at his IRTS speech in New York, government should not be "micromanaging" the transition to HDTV. He also wisely stated that "trusting the marketplace

means giving businesses the opportunity to fail.”⁹ If a broadcaster’s digital offering is not more attractive, on a purely qualitative comparison, to a cable operator than ZDTV, there is no reason for the government to force that cable operator to choose the broadcaster’s second channel over the only channel offered by ZDTV.

The transition to the digital world will affect all the different players in the market -- not just the broadcasting industry, but cable programmers, cable operators, and -- most of all -- the consumers of these services. It is important for all those affected that the FCC make the transition as smooth as possible. The most important way the FCC can ensure a smooth progression to digital is to resist enacting regulations precipitously.

If regulations are enacted too hastily, the result could inhibit the scope and pace of technology development, stifle competition, limit consumer choice, and generate widespread discontent among consumers and industry participants. Where, as here, the Commission is free to defer its decision on the need for additional regulatory burdens on the industry, it should allow the marketplace to function until a clear need for regulation arises.

⁹ Remarks of William E. Kennard, Chairman, Federal Communications Commission, to the International Radio and Television Society, New York, New York (Sept. 15, 1998).

CONCLUSION

ZDTV believes that digital media are the key to the future. But for cable customers to lose the potential to obtain new services like ZDTV through the FCC's interfering hand on their free choice would be a serious mistake.

Respectfully submitted,

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